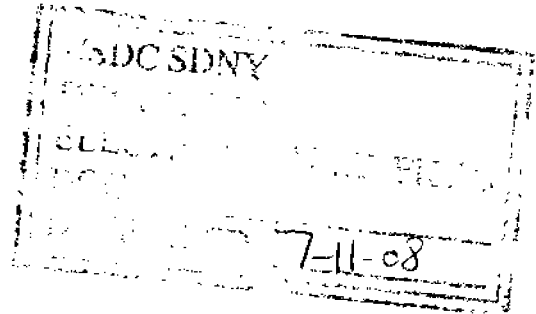


Re: CIVIL, J

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Fosamax Products Liability Litigation

1:06-md-1789 (JFK)

-----X
This Document Relates to:

Janie H. Clary

v. Merck & Co., Inc.

Case No: 1:08-cv-03111-JFK
-----X

STIPULATION AND ORDER OF DISMISSAL WITHOUT PREJUDICE

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Janie H. Clary and Defendant Merck & Co., Inc., ("Merck") through their respective undersigned counsel, as follows:

1. This case, having been resolved upon the agreement of Plaintiff to voluntarily dismiss without prejudice her claims against Defendant and the agreement of Defendant not to seek from Plaintiff its fees and costs, is hereby dismissed without prejudice pursuant to Fed. R. Civ. P. 41(a)(1)(ii).


2. Plaintiff further agrees to re-file any suit based on any similar claims related to Fosamax against Merck, any of Merck's subsidiaries, agents, distributors, employees, sales representatives, or against any pharmacy in this Court, without joining any party whose joinder would defeat diversity pursuant to 28 U.S.C. § 1332.

3. Each party is to bear its own costs and attorneys' fees.

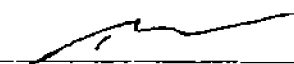
LEVIN, PAPANTONIO, THOMAS,
MITCHELL, ESCHSNER & PROCTOR,
P.A.

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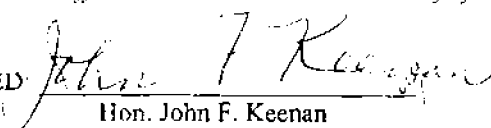
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Attorneys for Plaintiff

Attorneys for Defendant Merck & Co., Inc

SO ORDERED


Hon. John F. Keenan

7/10/08